

**SUBJECT:** Expunction of a notice of lis pendens

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 6 ayes — Oliveira, Shine, Collier, Romero, Villalba, Workman  
0 nays  
1 absent — Stickland

**WITNESSES:** For — Sandy Hoy, Texas Apartment Association; Roland Love, Texas Land Title Association; (*Registered, but did not testify*: Cary Roberts, County and District Clerks' Association of Texas; Randy Lee, Stewart Title Guaranty Company; Ned Munoz, Texas Association of Builders; Celeste Embrey, Texas Bankers Association; Allen Place, Texas Land Title Association; John Fleming, Texas Mortgage Bankers Association)  
  
Against — (*Registered, but did not testify*: Brian Engel, Barrett Daffin Frappier Turner and Engel)

**BACKGROUND:** A notice of "lis pendens" is a notice of a pending real estate lawsuit involving eminent domain, a title claim, establishment of interest in real property, or enforcement of and encumbrance against real property.

Property Code, sec. 12.0071 allows parties to an action connected to a filed notice of lis pendens to apply to the court to expunge the notice. The court is required to expunge the notice if it determines that the pleading on which the notice is based does not contain a real property claim, the claimant fails to establish probable validity of a real property claim, or proper notice of lis pendens was not properly served.

Some observers recommend clarifying whether entities may transfer or encumber an interest in real property after an expunction of notice of lis pendens has been ordered, arguing that current uncertainty about the reliability of expunctions is discouraging title companies from transferring or encumbering interest in real property in a timely manner.

**DIGEST:** CSHB 4086 would specify that once a notice of lis pendens had been ordered expunged, an interest in the real property could be sold or encumbered free of all matters disclosed in the notice and claims in the action to which the notice related.

The bill also would specify that any information that could be derived from a notice of lis pendens did not constitute constructive or actual notice of any matter relating to the action in connection with the notice of lis pendens.

The bill would take effect September 1, 2017, and would apply only to an order for expunction recorded on or after that date.

**NOTES:** A companion bill, SB 1955 by Hughes, was approved by the Senate on April 26 and reported favorably from the House Committee on Business and Commerce on May 3.